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CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 165

Introduced by Assembly Member Lara
(Coauthors: Assembly Members Alejo, Blumenfield, Campos, Davis,
Hall, Roger Hernández, Mitchell, John A. Pérez, and Solorio)
(Coauthor: Senator Lowenthal)

January 20, 2011

An act to amend Sections 14501, 35186, and 41020 of, and to add Article 5.5 (commencing with Section 49010) to Chapter 6 of Part 27 of Division 4 of Title 2 of, the Education Code, and to amend Section 905 of the Government Code, relating to pupil fees.

LEGISLATIVE COUNSEL'S DIGEST

AB 165, as amended, Lara. Pupil fees.

(1) Existing law requires the Legislature to provide for a system of common schools by which a free school is required to be kept up and supported in each district. Existing law prohibits a pupil enrolled in school from being required to pay a fee, deposit, or other charge not specifically authorized by law.

This bill would prohibit a pupil enrolled in a public school from being required to pay a pupil fee, as defined, for participation in an educational activity, as defined, as specified. The bill would provide that this prohibition is not to be interpreted to prohibit solicitation of voluntary donations, voluntary participation in fundraising activities, or school districts, schools, and other entities from providing pupils prizes or other recognition for voluntarily participating in fundraising activities. The bill would specify that these provisions apply to all public schools, including, but not limited to, charter schools and alternative schools, are declarative of existing law, and should not be interpreted to prohibit the imposition of a fee, deposit, or other charge otherwise allowed by law.

The bill would require a superintendent of a school district, county superintendent of schools, or chief executive officer, or *a person in the equivalent position*, of a charter school, commencing with the 2011–12 fiscal year, *and each fiscal year thereafter*, to determine, within the first 8 weeks after the first day pupils attend school for that school year, *or during a specified time period for the 2011–12 fiscal year*, whether an unlawful pupil fee has been, or is being, charged in the current fiscal year, *or on or after January 1, 2012, for the 2011–12 fiscal year*. If the superintendent of a school district, county superintendent of schools, or chief executive officer, or *a person in the equivalent position*, of a charter school makes this determination, the bill would require him or her to present the determination at a public hearing *or meeting* of the applicable governing board or body at which the governing board or body would be required to identify the nature of the violation and take action to provide full reimbursements to all affected pupils, parents, or guardians within a specified time period. The bill would require the hearing *or meeting* to meet specified requirements. By imposing additional duties on local educational agencies, this bill would impose a state-mandated local program.

(2) Existing law requires the Controller, in consultation with the Department of Finance and the State Department of Education, to develop a plan to review and report on financial and compliance audits, and with representatives of other entities, to recommend the statements and other information to be included in the audit reports filed with the state by local educational agencies, and to propose the content of an audit guide.

This bill would require a compliance audit, commencing with audits of the 2011–12 fiscal year, to include the verification of compliance

with the prohibition against the imposition of pupil fees for participation in educational activities in violation of specified law. Notwithstanding specified law, the bill would require this verification to be added to the audit guide commencing with audits of the 2011–12 fiscal year. The bill also would allow for the adoption of emergency regulations to achieve this goal and would require charter schools to be subject to those audits to ensure compliance with the prohibition against the imposition of unlawful pupil fees.

(3) Existing law requires a school district to use its uniform complaint process to help identify and resolve any deficiencies related to instructional materials, emergency or urgent facilities conditions that pose a threat to the health and safety of pupils or staff, teacher vacancy or misassignment, and intensive instruction and services provided to pupils who have not passed one or both parts of the high school exit examination after the completion of grade 12. Existing law provides certain complainants the right to file an appeal to the Superintendent of Public Instruction, who is required to provide a written report to the State Board of Education that describes the basis for the complaint and, as appropriate, proposes a remedy. A notice regarding the appropriate subjects of a complaint is required to be posted in each classroom in each school in the school district and a complaint regarding those deficiencies is required to be filed with the principal of the school or his or her designee, except as specified.

This bill also would require a school district and a charter school to use its uniform complaint process to help identify and resolve any deficiencies related to the imposition of pupil fees for participation in educational activities, as those terms are defined. The bill also would provide persons with a complaint regarding the imposition of pupil fees the right to file an appeal to the Superintendent and would require the Superintendent to provide the written report to the state board and the complainant no later than 30 working days after the appeal was received by the Superintendent. If the report finds a violation, the bill would require the Superintendent to require the offending school district, charter school, or school to fully reimburse all affected pupils, parents, or guardians. The bill also would require the classroom notice to include certain information about the prohibition against charging pupil fees for participation in educational activities. The bill would require a school district, county office of education, and charter school to establish local policies and procedures, post notices, and implement the uniform complaint process provisions regarding the imposition of pupil fees for

participation in educational activities by March 1, 2012. By imposing additional duties on local educational agencies, this bill would impose a state-mandated local program.

(4) Existing law requires a county superintendent of schools to provide for an audit of all funds under his or her jurisdiction and requires the governing board of a local educational agency to either provide for an audit of the books and accounts of the local educational agency or make arrangements with the county superintendent of schools having jurisdiction over the local educational agency to provide for that auditing. Existing law requires a county superintendent of schools to be responsible for reviewing the audit exceptions contained in an audit of a local educational agency under his or her jurisdiction related to specified topics, and determining whether the exceptions were either corrected or an acceptable plan of correction was developed. Existing law requires the county office of education to review certain audit exceptions upon submission and receipt of a final audit report. Existing law requires the Superintendent of Public Instruction to be responsible for ensuring that local educational agencies have either corrected or developed plans of correction for specified audit exceptions.

This bill, commencing with the 2011–12 audit of local educational agencies, would require the county superintendent of schools to also include in the review of audit exceptions those audit exceptions related to the imposition of pupil fees for participation in educational activities in violation of specified law, and to determine whether the exceptions are either corrected or an acceptable plan of correction is developed. The bill would prohibit an audit exception related to the imposition of unlawful pupil fees from being deemed corrected until the school district, county office of education, or charter school fully reimburses all affected parents, guardians, and pupils. The bill also would require the county office of education to review audit exceptions relating to the imposition of unlawful pupil fees. If, in an audit for a subsequent year, the auditor finds an uncorrected or new audit exception related to the imposition of unlawful pupil fees, the bill would require the auditor to make a specified disclosure and would require the Superintendent to withhold certain payments to the school district, county office of education, or charter school until they provide reimbursement, as specified. By imposing additional duties on local educational agencies, this bill would impose a state-mandated local program.

(5) Existing law excepts certain claims from the requirement that all claims for money or damages against local public entities be presented in accordance with specified law.

This bill would additionally except specified claims for reimbursement of pupil fees for participation in educational activities.

(6) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 14501 of the Education Code is amended
2 to read:

3 14501. (a) As used in this chapter, “financial and compliance
4 audit” shall be consistent with the definition provided in the
5 “Standards for Audits of Governmental Organizations, Programs,
6 Activities, and Functions” promulgated by the Comptroller General
7 of the United States. Financial and compliance audits conducted
8 under this chapter shall fulfill federal single audit requirements.

9 (b) As used in this chapter, “compliance audit” means an audit
10 that ascertains and verifies whether or not funds provided through
11 apportionment, contract, or grant, either federal or state, have been
12 properly disbursed and expended as required by law or regulation,
13 or both, and includes the verification of each of the following:

14 (1) The reporting requirements for the sufficiency of textbooks
15 or instructional materials, or both, as defined in Section 60119.

16 (2) Teacher misassignments pursuant to Section 44258.9.

17 (3) The accuracy of information reported on the School
18 Accountability Report Card required by Section 33126. The
19 requirements set forth in paragraphs (1) and (2) and this paragraph
20 shall be added to the audit guide requirements pursuant to
21 subdivision (b) of Section 14502.1.

22 (4) (A) Compliance with Article 5.5 (commencing with Section
23 49010) of Chapter 6 of Part 27 of Division 4 of Title 2 and Section

1 5 of Article IX of the California Constitution, commencing with
2 audits of the 2011–12 fiscal year.

3 (B) The requirements of this paragraph shall be added to the
4 audit guide adopted pursuant to Section 14502.1 commencing with
5 audits of the 2011–12 fiscal year.

6 (C) Notwithstanding the timelines specified in subdivision (b)
7 of Section 14502.1, and to ensure that the requirements of this
8 paragraph are added to the audit guide for audits of the 2011–12
9 fiscal year, the process for adopting emergency regulations set
10 forth in Section 11346.1 of the Government Code may be followed.

11 (D) Notwithstanding any other law, and commencing with audits
12 of the 2011–12 fiscal year, charter schools shall be subject to audits
13 conducted pursuant to Section 41020 to ensure compliance with
14 the requirements of this paragraph.

15 SEC. 2. Section 35186 of the Education Code is amended to
16 read:

17 35186. (a) A school district shall use the uniform complaint
18 process it has adopted as required by Chapter 5.1 (commencing
19 with Section 4600) of Division 1 of Title 5 of the California Code
20 of Regulations, with modifications, as necessary, to help identify
21 and resolve any deficiencies related to instructional materials,
22 emergency or urgent facilities conditions that pose a threat to the
23 health and safety of pupils or staff, teacher vacancy or
24 misassignment, intensive instruction and services provided pursuant
25 to Section 37254 to pupils who have not passed one or both parts
26 of the high school exit examination after the completion of grade
27 12, and the imposition of pupil fees for participation in educational
28 activities. A charter school shall use the uniform complaint process
29 it has adopted as required by Chapter 5.1 (commencing with
30 Section 4600) of Division 1 of Title 5 of the California Code of
31 Regulations, with modifications, as necessary, to help identify and
32 resolve any deficiencies related to the imposition of pupil fees for
33 participation in educational activities.

34 (1) A complaint may be filed anonymously. A complainant who
35 identifies himself or herself is entitled to a response if he or she
36 indicates that a response is requested. A complaint form shall
37 include a space to mark to indicate whether a response is requested.
38 If Section 48985 is otherwise applicable, the response, if requested,
39 and report shall be written in English and the primary language in

1 which the complaint was filed. All complaints and responses are
2 public records.

3 (2) The complaint form shall specify the location for filing a
4 complaint. A complainant may add as much text to explain the
5 complaint as he or she wishes.

6 (3) Except as provided pursuant to paragraph (4), a complaint
7 shall be filed with the principal of the school or his or her designee.
8 A complaint about problems beyond the authority of the school
9 principal shall be forwarded in a timely manner but not to exceed
10 10 working days to the appropriate school district or charter school
11 official for resolution.

12 (4) A complaint regarding any deficiencies related to intensive
13 instruction and services provided pursuant to Section 37254 to
14 pupils who have not passed one or both parts of the high school
15 exit examination after the completion of grade 12 shall be
16 submitted to the district official designated by the district
17 superintendent. A complaint may be filed at the school district
18 office, or it may be filed at the schoolsite and shall be immediately
19 forwarded to the designee of the district superintendent.

20 (b) The principal or the designee of the district superintendent
21 or charter school, as applicable, shall make all reasonable efforts
22 to investigate any problem within his or her authority. The principal
23 or designee of the district superintendent or charter school shall
24 remedy a valid complaint within a reasonable time period but not
25 to exceed 30 working days from the date the complaint was
26 received. The principal or designee of the district superintendent
27 or charter school shall report to the complainant the resolution of
28 the complaint within 45 working days of the initial filing. If the
29 principal makes this report, the principal shall also report the same
30 information in the same timeframe to the designee of the district
31 superintendent or charter school.

32 (c) A complainant not satisfied with the resolution of the
33 principal or the designee of the district superintendent or charter
34 school has the right to describe the complaint to the governing
35 board of the school district or the governing body of the charter
36 school at a regularly scheduled hearing of the governing board or
37 body. As to complaints involving a condition of a facility that
38 poses an emergency or urgent threat, as defined in paragraph (1)
39 of subdivision (c) of Section 17592.72, or complaints involving
40 the imposition of pupil fees for participation in educational

1 activities, a complainant who is not satisfied with the resolution
2 proffered by the principal or the designee of the district
3 superintendent or charter school has the right to file an appeal to
4 the Superintendent, who shall provide a written report to the state
5 board and the complainant no later than 30 working days after the
6 date the appeal was received by the Superintendent describing the
7 basis for the complaint and, as appropriate, a proposed remedy for
8 the issue described in the complaint. If the report finds that a school
9 district, charter school, or school has unlawfully imposed a pupil
10 fee for participation in educational activities, the Superintendent
11 shall require the school district, charter school, or school to fully
12 reimburse all affected pupils, parents, or guardians.

13 (d) A school district or charter school shall report summarized
14 data on the nature and resolution of all complaints on a quarterly
15 basis to the county superintendent of schools and the governing
16 board of the school district or the governing body of the charter
17 school. The summaries shall be publicly reported on a quarterly
18 basis at a regularly scheduled meeting of the governing board of
19 the school district or the governing body of the charter school. The
20 report shall include the number of complaints by general subject
21 area with the number of resolved and unresolved complaints. The
22 complaints and written responses shall be available as public
23 records.

24 (e) The procedure required pursuant to this section is intended
25 to address all of the following in school districts, and the
26 complaints described in paragraph (5) in charter schools:

27 (1) A complaint related to instructional materials as follows:

28 (A) A pupil, including an English learner, does not have
29 standards-aligned textbooks or instructional materials or
30 state-adopted or district-adopted textbooks or other required
31 instructional material to use in class.

32 (B) A pupil does not have access to instructional materials to
33 use at home or after school.

34 (C) Textbooks or instructional materials are in poor or unusable
35 condition, have missing pages, or are unreadable due to damage.

36 (2) A complaint related to teacher vacancy or misassignment
37 as follows:

38 (A) A semester begins and a teacher vacancy exists.

39 (B) A teacher who lacks credentials or training to teach English
40 learners is assigned to teach a class with more than 20-percent

1 English learner pupils in the class. This subparagraph does not
2 relieve a school district from complying with state or federal law
3 regarding teachers of English learners.

4 (C) A teacher is assigned to teach a class for which the teacher
5 lacks subject matter competency.

6 (3) A complaint related to the condition of facilities that pose
7 an emergency or urgent threat to the health or safety of pupils or
8 staff as defined in paragraph (1) of subdivision (c) of Section
9 17592.72 and any other emergency conditions the school district
10 determines appropriate and the requirements established pursuant
11 to subdivision (a) of Section 35292.5.

12 (4) A complaint related to the provision of intensive instruction
13 and services pursuant to paragraphs (4) and (5) of subdivision (d)
14 of Section 37254.

15 (5) A complaint related to the imposition of pupil fees for
16 participation in educational activities.

17 (f) (1) In order to identify appropriate subjects of complaint, a
18 notice shall be posted in each classroom in each school in the
19 school district notifying parents, guardians, pupils, and teachers
20 of the following:

21 (A) There should be sufficient textbooks and instructional
22 materials. For there to be sufficient textbooks and instructional
23 materials each pupil, including English learners, must have a
24 textbook or instructional materials, or both, to use in class and to
25 take home.

26 (B) School facilities must be clean, safe, and maintained in good
27 repair.

28 (C) There should be no teacher vacancies or misassignments as
29 defined in paragraphs (3) and (5) of subdivision (h).

30 (D) Pupils shall not be charged fees, including security deposits,
31 or be required to purchase materials or equipment, to participate
32 in a class or an extracurricular activity.

33 (E) Pupils who have not passed the high school exit examination
34 by the end of grade 12 are entitled to receive intensive instruction
35 and services for up to two consecutive academic years after
36 completion of grade 12 or until the pupil has passed both parts of
37 the high school exit examination, whichever comes first, pursuant
38 to paragraphs (4) and (5) of subdivision (d) of Section 37254. The
39 information in this paragraph, which is to be included in the notice
40 required pursuant to this subdivision, shall only be included in

1 notices posted in classrooms in schools with grades 10 to 12,
2 inclusive.

3 (F) The location at which to obtain a form to file a complaint
4 in case of a shortage of complaint forms. Posting a notice
5 downloadable from the Internet Web site of the department shall
6 satisfy this posting requirement.

7 (2) In order to identify appropriate subjects of complaint, a
8 notice shall be posted in each classroom of each charter school
9 notifying parents, guardians, pupils, and teachers of both of the
10 following:

11 (A) Pupils shall not be charged fees, including security deposits,
12 or be required to purchase materials or equipment, to participate
13 in a class or an extracurricular activity.

14 (B) The location at which to obtain a form to file a complaint
15 in case of a shortage of complaint forms. Posting a notice
16 downloadable from the Internet Web site of the department shall
17 satisfy this posting requirement.

18 (g) (1) A local educational agency shall establish local policies
19 and procedures, post notices, and implement this section on or
20 before January 1, 2005.

21 (2) A school district, county office of education, and charter
22 school shall establish local policies and procedures, post notices,
23 and implement the provisions of this section regarding the
24 imposition of pupil fees for participation in educational activities
25 on or before March 1, 2012.

26 (h) For purposes of this section, the following definitions apply:

27 (1) "Educational activity" has the same meaning as specified
28 in subdivision (a) of Section 49010.

29 (2) "Good repair" has the same meaning as specified in
30 subdivision (d) of Section 17002.

31 (3) "Misassignment" means the placement of a certificated
32 employee in a teaching or services position for which the employee
33 does not hold a legally recognized certificate or credential or the
34 placement of a certificated employee in a teaching or services
35 position that the employee is not otherwise authorized by statute
36 to hold.

37 (4) "Pupil fees" has the same meaning as specified in subdivision
38 (b) of Section 49010.

39 (5) "Teacher vacancy" means a position to which a single
40 designated certificated employee has not been assigned at the

1 beginning of the year for an entire year or, if the position is for a
2 one-semester course, a position to which a single designated
3 certificated employee has not been assigned at the beginning of a
4 semester for an entire semester.

5 SEC. 3. Section 41020 of the Education Code is amended to
6 read:

7 41020. (a) It is the intent of the Legislature to encourage sound
8 fiscal management practices among local educational agencies for
9 the most efficient and effective use of public funds for the
10 education of children in California by strengthening fiscal
11 accountability at the district, county, and state levels.

12 (b) (1) Not later than the first day of May of each fiscal year,
13 each county superintendent of schools shall provide for an audit
14 of all funds under his or her jurisdiction and control and the
15 governing board of each local educational agency shall either
16 provide for an audit of the books and accounts of the local
17 educational agency, including an audit of income and expenditures
18 by source of funds, or make arrangements with the county
19 superintendent of schools having jurisdiction over the local
20 educational agency to provide for that auditing.

21 (2) A contract to perform the audit of a local educational agency
22 that has a disapproved budget or has received a negative
23 certification on any budget or interim financial report during the
24 current fiscal year or either of the two preceding fiscal years, or
25 for which the county superintendent of schools has otherwise
26 determined that a lack of going concern exists, is not valid unless
27 approved by the responsible county superintendent of schools and
28 the governing board.

29 (3) If the governing board of a local educational agency has not
30 provided for an audit of the books and accounts of the local
31 educational agency by April 1, the county superintendent of schools
32 having jurisdiction over the local educational agency shall provide
33 for the audit of each local educational agency.

34 (4) An audit conducted pursuant to this section shall comply
35 fully with the Government Auditing Standards issued by the
36 Comptroller General of the United States.

37 (5) For purposes of this section, "local educational agency" does
38 not include community colleges.

39 (c) Each audit conducted in accordance with this section shall
40 include all funds of the local educational agency, including the

1 student body and cafeteria funds and accounts and any other funds
2 under the control or jurisdiction of the local educational agency.
3 Each audit shall also include an audit of pupil attendance
4 procedures.

5 (d) All audit reports for each fiscal year shall be developed and
6 reported using a format established by the Controller after
7 consultation with the Superintendent and the Director of Finance.

8 (e) (1) The cost of the audits provided for by the county
9 superintendent of schools shall be paid from the county school
10 service fund and the county superintendent of schools shall transfer
11 the pro rata share of the cost chargeable to each district from district
12 funds.

13 (2) The cost of the audit provided for by a governing board shall
14 be paid from local educational agency funds. The audit of the funds
15 under the jurisdiction and control of the county superintendent of
16 schools shall be paid from the county school service fund.

17 (f) (1) The audits shall be made by a certified public accountant
18 or a public accountant, licensed by the California Board of
19 Accountancy, and selected by the local educational agency, as
20 applicable, from a directory of certified public accountants and
21 public accountants deemed by the Controller as qualified to conduct
22 audits of local educational agencies, which shall be published by
23 the Controller not later than December 31 of each year.

24 (2) Commencing with the 2003–04 fiscal year and except as
25 provided in subdivision (d) of Section 41320.1, it is unlawful for
26 a public accounting firm to provide audit services to a local
27 educational agency if the lead audit partner, or coordinating audit
28 partner, having primary responsibility for the audit, or the audit
29 partner responsible for reviewing the audit, has performed audit
30 services for that local educational agency in each of the six previous
31 fiscal years. The Education Audits Appeal Panel may waive this
32 requirement if the panel finds that no otherwise eligible auditor is
33 available to perform the audit.

34 (3) It is the intent of the Legislature that, notwithstanding
35 paragraph (2), the rotation within public accounting firms conform
36 to provisions of the federal Sarbanes-Oxley Act of 2002 (P.L.
37 107-204; 15 U.S.C. Sec. 7201 et seq.), and upon release of the
38 report required by the act of the Comptroller General of the United
39 States addressing the mandatory rotation of registered public
40 accounting firms, the Legislature intends to reconsider the

1 provisions of paragraph (2). In determining which certified public
2 accountants and public accountants shall be included in the
3 directory, the Controller shall use the following criteria:

4 (A) The certified public accountants or public accountants shall
5 be in good standing as certified by the Board of Accountancy.

6 (B) The certified public accountants or public accountants, as
7 a result of a quality control review conducted by the Controller
8 pursuant to Section 14504.2, shall not have been found to have
9 conducted an audit in a manner constituting noncompliance with
10 subdivision (a) of Section 14503.

11 (g) (1) The auditor's report shall include each of the following:

12 (A) A statement that the audit was conducted pursuant to
13 standards and procedures developed in accordance with Chapter
14 3 (commencing with Section 14500) of Part 9 of Division 1 of
15 Title 1.

16 (B) A summary of audit exceptions and management
17 improvement recommendations.

18 (C) Each audit of a local educational agency shall include an
19 evaluation by the auditor on whether there is substantial doubt
20 about the ability of the local educational agency to continue as a
21 going concern for a reasonable period of time. This evaluation
22 shall be based on the Statement of Auditing Standards (SAS) No.
23 59, as issued by the AICPA regarding disclosure requirements
24 relating to the ability of the entity to continue as a going concern.

25 (2) To the extent possible, a description of correction or plan
26 of correction shall be incorporated in the audit report, describing
27 the specific actions that are planned to be taken, or that have been
28 taken, to correct the problem identified by the auditor. The
29 descriptions of specific actions to be taken or that have been taken
30 shall not solely consist of general comments such as "will
31 implement," "accepted the recommendation," or "will discuss at
32 a later date."

33 (h) Not later than December 15, a report of each local
34 educational agency audit for the preceding fiscal year shall be filed
35 with the county superintendent of schools of the county in which
36 the local educational agency is located, the department, and the
37 Controller. The Superintendent shall make any adjustments
38 necessary in future apportionments of all state funds, to correct
39 any audit exceptions revealed by those audit reports.

(i) (1) Commencing with the 2002–03 audit of local educational agencies pursuant to this section and subdivision (d) of Section 41320.1, each county superintendent of schools shall be responsible for reviewing the audit exceptions contained in an audit of a local educational agency under his or her jurisdiction related to attendance, inventory of equipment, internal control, and any miscellaneous items, and determining whether the exceptions have been either corrected or an acceptable plan of correction has been developed.

(2) Commencing with the 2004–05 audit of local educational agencies pursuant to this section and subdivision (d) of Section 41320.1, each county superintendent of schools shall include in the review of audit exceptions performed pursuant to this subdivision those audit exceptions related to use of instructional materials program funds, teacher misassignments pursuant to Section 44258.9, information reported on the school accountability report card required pursuant to Section 33126 and shall determine whether the exceptions are either corrected or an acceptable plan of correction has been developed.

(3) (A) Commencing with the 2011–12 audit of local educational agencies pursuant to this section and subdivision (d) of Section 41320.1, each county superintendent of schools shall include in the review of audit exceptions performed pursuant to this subdivision those audit exceptions related to the imposition of pupil fees for participation in educational activities in violation of Section 49011 and Section 5 of Article IX of the California Constitution and shall determine whether the exceptions are either corrected or an acceptable plan of correction has been developed.

(B) An audit exception related to the imposition of these pupil fees shall not be deemed corrected until the school district, county office of education, or charter school has, at a minimum, fully reimbursed all affected parents, guardians, and pupils.

(j) Upon submission of the final audit report to the governing board of each local educational agency and subsequent receipt of the audit by the county superintendent of schools having jurisdiction over the local educational agency, the county office of education shall do all of the following:

(1) Review audit exceptions related to attendance, inventory of equipment, internal control, and other miscellaneous exceptions. Attendance exceptions or issues shall include, but not be limited

1 to, those related to revenue limits, adult education, and independent
2 study.

3 (2) Review audit exceptions related to the imposition of pupil
4 fees for participation in educational activities in violation of Section
5 49011 and Section 5 of Article IX of the California Constitution.

6 (3) If a description of the correction or plan of correction has
7 not been provided as part of the audit required by this section, then
8 the county superintendent of schools shall notify the local
9 educational agency and request the governing board of the local
10 educational agency to provide to the county superintendent of
11 schools a description of the corrections or plan of correction by
12 March 15.

13 (4) Review the description of correction or plan of correction
14 and determine its adequacy. If the description of the correction or
15 plan of correction is not adequate, the county superintendent of
16 schools shall require the local educational agency to resubmit that
17 portion of its response that is inadequate.

18 (k) Each county superintendent of schools shall certify to the
19 Superintendent and the Controller, not later than May 15, that his
20 or her staff has reviewed all audits of local educational agencies
21 under his or her jurisdiction for the prior fiscal year, that all
22 exceptions that the county superintendent was required to review
23 were reviewed, and that all of those exceptions, except as otherwise
24 noted in the certification, have been corrected by the local
25 educational agency or that an acceptable plan of correction has
26 been submitted to the county superintendent of schools. In addition,
27 the county superintendent shall identify, by local educational
28 agency, any attendance-related audit exception or exceptions
29 involving state funds, and require the local educational agency to
30 which the audit exceptions were directed to submit appropriate
31 reporting forms for processing by the Superintendent.

32 (l) (1) In the audit of a local educational agency for a subsequent
33 year, the auditor shall review the correction or plan or plans of
34 correction submitted by the local educational agency to determine
35 if the exceptions have been resolved. If not, the auditor shall
36 immediately notify the appropriate county office of education and
37 the department and restate the exception in the audit report. After
38 receiving that notification, the department shall either consult with
39 the local educational agency to resolve the exception or require

1 the county superintendent of schools to follow up with the local
2 educational agency.

3 (2) If, in the audit of a school district, county office of education,
4 or charter school for a subsequent year, the auditor determines that
5 an exception related to the imposition of pupil fees for participation
6 in educational activities in violation of Section 49011 and Section
7 5 of Article IX of the California Constitution has not been
8 corrected, or that the local educational agency has a new audit
9 exception related to the imposition of pupil fees for participation
10 in educational activities in violation of Section 49011 and Section
11 5 of Article IX of the California Constitution, both of the following
12 shall occur:

13 (A) The auditor shall disclose the unresolved or new audit
14 exception, and the amount of withholding required pursuant to
15 subparagraph (B), in the audit report.

16 (B) (i) The Superintendent shall, based on the audit year's actual
17 expenditures, withhold 1 percent of the amount expended for
18 administrative costs, which are expenditures coded to general
19 administrative functions (codes 7000 to 7999, inclusive) pursuant
20 to Procedure 325 of Section 300 of the California School
21 Accounting Manual, from the next principal or general purpose
22 apportionment to the school district, county office of education,
23 or charter school until they reimburse all pupil fees collected in
24 violation of Section 49011 and Section 5 of Article IX of the
25 California Constitution.

26 (ii) If the Superintendent and auditor are unable to calculate 1
27 percent of the administrative costs of a charter school, or if the
28 amount of pupil fees for participation in educational activities
29 collected by the charter school is greater than the 1-percent
30 administrative fee, then an amount equal to the amount of pupil
31 fees for participation in educational activities collected, multiplied
32 by 10, shall be withheld by the Superintendent until the charter
33 school reimburses all unlawful pupil fees collected.

34 (iii) Funds withheld pursuant to this subparagraph shall be held
35 in trust by the Superintendent until he or she determines that the
36 school district, county office of education, or charter school has
37 reimbursed all unlawful pupil fees collected.

38 (m) (1) The Superintendent shall be responsible for ensuring
39 that local educational agencies have either corrected or developed
40 plans of correction for any one or more of the following:

1 (A) All federal and state compliance audit exceptions identified
2 in the audit.

3 (B) Any exceptions that the county superintendent certifies as
4 of May 15 have not been corrected.

5 (C) Any repeat audit exceptions that are not assigned to a county
6 superintendent to correct.

7 (2) In addition, the Superintendent shall be responsible for
8 ensuring that county superintendents of schools and each county
9 board of education that serves as the governing board of a local
10 educational agency either correct all audit exceptions identified in
11 the audits of county superintendents of schools and of the local
12 educational agencies for which the county boards of education
13 serve as the governing boards or develop acceptable plans of
14 correction for those exceptions.

15 (3) The Superintendent shall report annually to the Controller
16 on his or her actions to ensure that school districts, county
17 superintendents of schools, and each county board of education
18 that serves as the governing board of a school district have either
19 corrected or developed plans of correction for any of the exceptions
20 noted pursuant to paragraph (1).

21 (n) To facilitate correction of the exceptions identified by the
22 audits issued pursuant to this section, commencing with 2002–03
23 audits pursuant to this section, the Controller shall require auditors
24 to categorize audit exceptions in each audit report in a manner that
25 will make it clear to both the county superintendent of schools and
26 the Superintendent which exceptions they are responsible for
27 ensuring the correction of by a local educational agency. In
28 addition, the Controller annually shall select a sampling of county
29 superintendents of schools and perform a followup of the audit
30 resolution process of those county superintendents of schools and
31 report the results of that followup to the Superintendent and the
32 county superintendents of schools that were reviewed.

33 (o) County superintendents of schools shall adjust subsequent
34 local property tax requirements to correct audit exceptions relating
35 to local educational agency tax rates and tax revenues.

36 (p) If a governing board or county superintendent of schools
37 fails or is unable to make satisfactory arrangements for the audit
38 pursuant to this section, the Controller shall make arrangements
39 for the audit and the cost of the audit shall be paid from local

1 educational agency funds or the county school service fund, as the
2 case may be.

3 (q) Audits of regional occupational centers and programs are
4 subject to the provisions of this section.

5 (r) This section does not authorize examination of, or reports
6 on, the curriculum used or provided for in any local educational
7 agency.

8 (s) Notwithstanding any other law, a nonauditing, management,
9 or other consulting service to be provided to a local educational
10 agency by a certified public accounting firm while the certified
11 public accounting firm is performing an audit of the agency
12 pursuant to this section must be in accord with Government
13 Accounting Standards, Amendment No. 3, as published by the
14 United States General Accounting Office.

15 SEC. 4. Article 5.5 (commencing with Section 49010) is added
16 to Chapter 6 of Part 27 of Division 4 of Title 2 of the Education
17 Code, to read:

18
19 Article 5.5. Pupil Fees
20

21 49010. For purposes of this article, the following terms have
22 the following meanings:

23 (a) "Educational activity" means an activity offered by a school,
24 school district, charter school, or county office of education that
25 constitutes an integral fundamental part of elementary and
26 secondary education, including, but not limited to, curricular and
27 extracurricular activities.

28 (b) "Pupil fee" means a fee, deposit, or other charge imposed
29 on pupils, or a pupil's parents or guardians, in violation of Section
30 49011 and Section 5 of Article IX of the California Constitution,
31 which require educational activities to be provided free of charge
32 to all pupils without regard to their families' ability or willingness
33 to pay fees or request special waivers, as provided for in *Hartzell*
34 *v. Connell* (1984) 35 Cal.3d 899. A pupil fee includes, but is not
35 limited to, all of the following:

36 (1) A fee charged to a pupil as a condition for registering for
37 school or classes, or as a condition for participation in a class or
38 an extracurricular activity, regardless of whether the class or
39 activity is elective or compulsory, or is for credit.

1 (2) A security deposit, or other payment, that a pupil is required
2 to make to obtain a lock, locker, book, class apparatus, musical
3 instrument, uniform, or other materials or equipment.

4 (3) A purchase that a pupil is required to make to obtain
5 materials, supplies, equipment, or uniforms associated with an
6 educational activity.

7 49011. (a) A pupil enrolled in a public school shall not be
8 required to pay a pupil fee for participation in an educational
9 activity.

10 (b) All of the following requirements apply to the prohibition
11 identified in subdivision (a):

12 (1) All supplies, materials, and equipment needed to participate
13 in educational activities shall be provided to pupils free of charge.

14 (2) A fee waiver policy shall not make a pupil fee permissible.

15 (3) School districts and schools shall not establish a two-tier
16 educational system by requiring a minimal educational standard
17 and also offering a second, higher educational standard that pupils
18 may only obtain through payment of a fee or purchase of additional
19 supplies that the school district or school does not provide.

20 (4) A school district or school shall not offer course credit or
21 privileges related to educational activities in exchange for money
22 or donations of goods or services from a pupil or a pupil's parents
23 or guardians, and a school district or school shall not remove course
24 credit or privileges related to educational activities, or otherwise
25 discriminate against a pupil, because the pupil or the pupil's parents
26 or guardians did not or will not provide money or donations of
27 goods or services to the school district or school.

28 (c) This article shall not be interpreted to prohibit solicitation
29 of voluntary donations of funds or property, voluntary participation
30 in fundraising activities, or school districts, schools, and other
31 entities from providing pupils prizes or other recognition for
32 voluntarily participating in fundraising activities.

33 (d) This article applies to all public schools, including, but not
34 limited to, charter schools and alternative schools.

35 (e) This article is declarative of existing law and shall not be
36 interpreted to prohibit the imposition of a fee, deposit, or other
37 charge otherwise allowed by law.

38 49012. (a) (1) Commencing with the 2011–12 fiscal year, and
39 each fiscal year thereafter, a superintendent of a school district,
40 county superintendent of schools, or chief executive officer, or a

1 *person in the equivalent position, of a charter school shall*
2 *determine, within the first eight weeks after the first day pupils*
3 *attend school for that school year, whether pupil fees for*
4 *participation in educational activities have been charged, or are*
5 *being charged, within his or her jurisdiction in the current fiscal*
6 *year in violation of Section 49011 and Section 5 of Article IX of*
7 *the California Constitution.*

8 *(2) For purposes of the 2011–12 fiscal year only, the*
9 *determinations required by paragraph (1) shall be made from*
10 *February 1, 2012, to March 1, 2012, inclusive, and shall be limited*
11 *in scope to determining whether pupil fees for participation in*
12 *educational activities have been, or are being, charged on or after*
13 *January 1, 2012.*

14 *(b) (1) If a superintendent of a school district; or county*
15 *superintendent of schools; or chief executive officer, or the*
16 *equivalent position, of a charter school determines that an unlawful*
17 *pupil fee was, or is being, charged in the current fiscal year, he or*
18 *she shall present this determination at a public hearing of the*
19 *governing board or body of the applicable school district; or county*
20 *office of education; or charter school at which the governing board*
21 *or body shall identify the nature of the violation and take action*
22 *to provide full reimbursements to all affected pupils, parents, or*
23 *guardians within 10 weeks of the beginning of the school year in*
24 *which the determination is made.*

25 *(2) If a chief executive officer, or a person in the equivalent*
26 *position, of a charter school determines that an unlawful pupil fee*
27 *was, or is being, charged in the current fiscal year, he or she shall*
28 *present this determination at a public meeting of the governing*
29 *body of the charter school at which the governing body, or the*
30 *chief executive officer or person in the equivalent position, shall*
31 *identify the nature of the violation and take action to provide full*
32 *reimbursements to all affected pupils, parents, or guardians within*
33 *10 weeks of the beginning of the school year in which the*
34 *determination is made.*

35 *(c) ~~The public hearing or hearings~~ A public hearing or meeting*
36 *held pursuant to subdivision (b) shall meet all of the following*
37 *requirements:*

38 *(1) Be conducted during a regularly scheduled meeting of the*
39 *governing board held pursuant to Article 3 (commencing with*
40 *Section 35140) of Chapter 2 of Part 21 of Division 3 or Article 1*

1 (commencing with Section 1000) of Chapter 1 of Part 2 of Division
2 1 of Title 1, or, in the case of a charter school, during a public
3 meeting of the governing body of the charter school where the
4 parent or guardian of each pupil enrolled in the charter school has
5 been notified prior to the meeting that the governing body will be
6 taking action pursuant to subdivision (b).

7 (2) Take place on or before the end of the eighth week after the
8 first day pupils attend school for that school year. For schools that
9 operate on a multitrack, year-round calendar, the hearing or
10 hearings shall be held on or before the end of the eighth week after
11 the first day pupils attend school for that school year on any tracks
12 that begin a school year in August or September.

13 (3) For the 2011–12 fiscal year, ~~the public hearing or hearings~~
14 *a public hearing or meeting* held pursuant to subdivision (b) shall
15 take place on or before March 1, 2012, and any reimbursement
16 made pursuant to subdivision (b) shall be provided on or before
17 March 15, 2012.

18 SEC. 5. Section 905 of the Government Code is amended to
19 read:

20 905. There shall be presented in accordance with Chapter 1
21 (commencing with Section 900) and Chapter 2 (commencing with
22 Section 910) all claims for money or damages against local public
23 entities except any of the following:

24 (a) Claims under the Revenue and Taxation Code or other statute
25 prescribing procedures for the refund, rebate, exemption,
26 cancellation, amendment, modification, or adjustment of any tax,
27 assessment, fee, or charge or any portion thereof, or of any
28 penalties, costs, or charges related thereto.

29 (b) Claims in connection with which the filing of a notice of
30 lien, statement of claim, or stop notice is required under any law
31 relating to liens of mechanics, laborers, or materialmen.

32 (c) Claims by public employees for fees, salaries, wages,
33 mileage, or other expenses and allowances.

34 (d) Claims for which the workers' compensation authorized by
35 Division 4 (commencing with Section 3200) of the Labor Code is
36 the exclusive remedy.

37 (e) Applications or claims for any form of public assistance
38 under the Welfare and Institutions Code or other provisions of law
39 relating to public assistance programs, and claims for goods,

1 services, provisions, or other assistance rendered for or on behalf
2 of any recipient of any form of public assistance.

3 (f) Applications or claims for money or benefits under any public
4 retirement or pension system.

5 (g) Claims for principal or interest upon any bonds, notes,
6 warrants, or other evidences of indebtedness.

7 (h) Claims that relate to a special assessment constituting a
8 specific lien against the property assessed and that are payable
9 from the proceeds of the assessment, by offset of a claim for
10 damages against it or by delivery of any warrant or bonds
11 representing it.

12 (i) Claims by the state or by a state department or agency or by
13 another local public entity or by a judicial branch entity.

14 (j) Claims arising under any provision of the Unemployment
15 Insurance Code, including, but not limited to, claims for money
16 or benefits, or for refunds or credits of employer or worker
17 contributions, penalties, or interest, or for refunds to workers of
18 deductions from wages in excess of the amount prescribed.

19 (k) Claims for the recovery of penalties or forfeitures made
20 pursuant to Article 1 (commencing with Section 1720) of Chapter
21 1 of Part 7 of Division 2 of the Labor Code.

22 (l) Claims governed by the Pedestrian Mall Law of 1960 (Part
23 1 (commencing with Section 11000) of Division 13 of the Streets
24 and Highways Code).

25 (m) Claims made pursuant to Section 340.1 of the Code of Civil
26 Procedure for the recovery of damages suffered as a result of
27 childhood sexual abuse. This subdivision shall apply only to claims
28 arising out of conduct occurring on or after January 1, 2009.

29 (n) Claims made pursuant to Section 701.820 of the Code of
30 Civil Procedure for the recovery of money pursuant to Section
31 26680.

32 (o) Claims made pursuant to Section 35186 of the Education
33 Code for reimbursement of pupil fees for participation in
34 educational activities.

35 SEC. 6. If the Commission on State Mandates determines that
36 this act contains costs mandated by the state, reimbursement to
37 local agencies and school districts for those costs shall be made

- 1 pursuant to Part 7 (commencing with Section 17500) of Division
- 2 4 of Title 2 of the Government Code.

O